

### REMARKS / ARGUMENTS

#### **1. Request for Continued Examination:**

5 The applicant respectfully requests continued examination of the above-indicated application as per 37 CFR 1.114.

#### **2. Claim rejections – 35 U.S.C. 102(b)**

10 Claims 1 – 8 and 11 – 19 were rejected under 35 U.S.C. 102(b) as being anticipated by Midgley et al.

#### Response:

##### Claim 1

15 Claim 1 has been amended to state that the network backup unit in the source computer system performs a checksum test and then the backup server utilizes the results of the checksum test to transfer the changes to the destination file, which is fully supported by specification paragraph [0020]. No new matter is introduced.

20 In col. 6, lines 7-37, Midgley discloses implementing a file system filter in the agent to direct a copy of captured data associated with a detected IRP to a journal file. Therefore, regarding Midgley's dynamic backup process, no checksum checking is needed by the file system filter as the modified data part can be directly captured by the file system filter through intercepting the IRP generated by a user mode application. In other words, the modified file identification mechanism of the instant application is different from that implemented in the cited reference; therefore, 25 Midgley fails to teach or suggest implementing the checksum test in the file system filter for identifying the variant part of the modified file. The applicant believes that currently amended Claim 1 has overcome the 102(b) rejections.

30 Furthermore, Claim 1 currently recites that 'at least a specific system call' is defined by a user, and a file modification message is only generated if a modification conforms to the specific system call. This limitation is neither taught nor suggested by

Midgley. Midgley teaches “a plurality of agent processes 30, each agent process being located on one of the servers 18, 20 and 22 containing information that will be replicated by the backup data storage system” [Col.7, lines 33 – 36]. In other words, separate agents are employed for different information. When the agent determines  
5 modifications have taken place, the agent will capture changes in order to record the modifications to a journal file, which will then be transferred to the backup system (i.e. all determining and recording of modifications is done by the data server). The system calls in Claim 1 are operational for all source files and do not involve storing modifications. Moreover, only certain modifications as **defined by the user** are  
10 deemed allowable by the system for creating a file modification message and in turn backing up a data file. In light of the above arguments, the applicant believes Claim 1 has been placed in condition for allowance. Consideration of Claim 1 is respectfully requested.

15 Claims 2 – 11 and 12

Claims 2 – 4 have been amended to correct the grammatical errors. Claims 5 and 11 have been amended due to amendments made to Claim 1. No new matter is introduced. As claims 2 – 11 and 12 are dependent on Claim 1, they should be found allowable if Claim 1 is found allowable.

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Claim 13

Claim 13 has been amended to incorporate limitations recited in Claim 2. In col. 16, lines 9-25, Midgley teaches using the file system filter to intercept an IRP for writing data to the file system and then pass the IRP to the file system. Therefore, if  
25 the above-mentioned request is used to teach the claimed specific system call, no system call replacement occurs as the file system filter does not change the request, i.e. the incoming request is identical to the outgoing request; otherwise, the file system fails to perform the desired data write operation due to the incorrect request. Similarly, regarding the returned IRP from the storage device, it is merely passed to an upper  
30 layer through the file system and the file system filter. Therefore, as there is no replacement action initiated in the file system filter for the incoming and outgoing requests according to Midgley’s teachings, the applicant believes that Claim 13 has

overcome the 102(b) rejection.

#### Claims 14 – 15

Claims 14 – 15 are dependent on currently amended Claim 13. As applicant  
5 believes Claim 13 has been placed in a position of allowance claims 14 – 15 should  
also be found allowable.

#### Claim 16

Claim 16 is a method claim containing similar limitations as Claim 1, and has  
10 also been amended to comply with the current amendments to Claim 1. Applicant  
therefore believes Claim 16 should be found allowable for the same reasons detailed  
in the above response to Claim 1.

#### Claims 17 – 19

15 Claims 17 – 19 are dependent on Claim 16 and therefore should be found  
allowable.

### **3. Allowable Subject Matter**

Claims 9 and 10 were objected to as being dependent upon a rejected base claim  
20 but would be allowable if rewritten in independent form.

#### Response

As the applicant believes Claim 1 has been placed in a position for allowance,  
claims 9 and 10 have been kept dependent on Claim 1.

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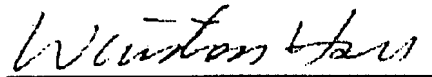
### **4. New claims**

Claim 20 is an independent claim comprising the limitations of original Claim 9,  
base claim 1, and all intervening claims. Claim 21 is a dependent claim comprising the  
limitations of original Claim 10. As the Examiner stated in the section 'Allowable  
30 Subject Matter' that claims 9 and 10 would be allowable if rewritten in independent  
form, the applicant believes that new claims 20 and 21 should be found allowable.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

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Sincerely yours,



Date: 05/08/2007

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15 Note: Please leave a message in my voice mail if you need to talk to me. (The time in D.C. is 12 hours behind the Taiwan time, i.e. 9 AM in D.C. = 9 PM in Taiwan.)